

AUSTIN, LEWIS & ROGERS, P.A.

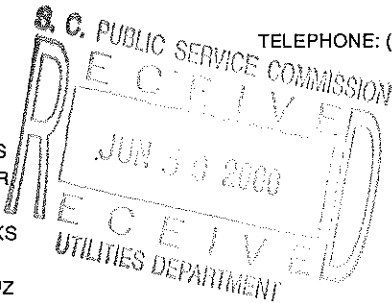
ATTORNEYS AND COUNSELORS AT LAW

CONGAREE BUILDING
508 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 256-4000 FACSIMILE: (803) 252-3679

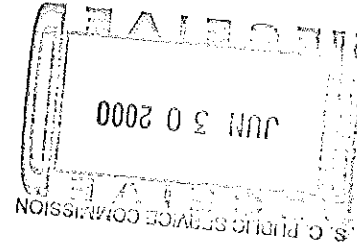
EMAIL: LawFirm@alrlaw.com

WILLIAM F. AUSTIN
E. CROSBY LEWIS
TIMOTHY F. ROGERS
RAYMON E. LARK, JR.
RICHARD L. WHITT
EDWARD L. EUBANKS
SANDRA L. BURR
TIMOTHY J. SLABOUZ
W. MICHAEL DUNCAN
JOHN T. MOBLEY



DANIEL S. LEWIS
(1940-1981)

June 30, 2000



The Honorable Gary E. Walsh
Executive Director
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
101 Executive Center Drive (Saluda Building)
Columbia, South Carolina 29210

VIA HAND-DELIVERY

**Re: Cherokee County Cogeneration Partners, L.P. - Purchased Power Agreement
with Duke Power Company, n/k/a Duke Power, a division of Duke Energy
Corporation
Docket No. 94-615-E**

Dear Mr. Walsh:

In accordance with the provisions of Order No. 95-26, issued in Docket No. 94-615-E, I have enclosed ten (10) copies of Amendment No. 3, dated June 30, 2000, to the above-referenced Purchased Power Agreement. Order No. 95-26 requires the filing of any amendments or modifications to the Purchased Power Agreement within ten (10) days of the parties' execution of the same. Additionally, this filing is in compliance with Orders issued by this Commission in Docket No. 80-251-E.

Because the rates set forth in Amendment No. 3 are, on average, below the rates previously approved by this Commission and because the net value of the capacity and energy provided by Cherokee to Duke pursuant to Amendment No. 3 is equivalent to the net value of the transaction approved by this Commission in Order No. 95-26, Duke believes that the cost to its customers of its purchases of power from Cherokee resulting from Amendment No. 3 will be no greater than the costs associated with an equivalent amount of capacity and energy if the parties had not entered into Amendment No. 3.

Amendment No. 3 contains redacted information which is sensitive/proprietary. Should you or your staff need to review the redacted information in the future, this information is available to be filed under seal as appropriate.

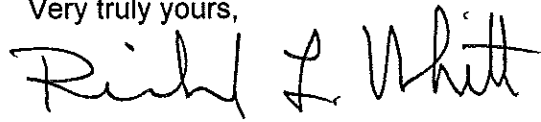
The Honorable Gary E. Walsh
June 30, 2000
Page 2

Please make the necessary arrangements to advise the Commission of your receipt of this Amendment in accordance with the Commission's practices.

If you have any questions or concerns, please do not hesitate to contact me.

With kind personal regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Rich L Whitt". The signature is written in a cursive, slightly stylized font.

Richard L. Whitt

RLW/ab
Enclosures

cc: John M.S. Hoefer, Esq., as local counsel for Cherokee

POSTED
JUL 7 3 00

ACCEPTED
Legal 2003 7-3-00

B. C. PUBLIC SERVICE COMMISSION
RECEIVED
JUN 30 2000
RECEIVED

AMENDMENT NO. 3

TO

PURCHASED POWER AGREEMENT

BETWEEN

DUKE POWER,

A DIVISION OF DUKE ENERGY CORPORATION,

AND

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.

DATED JUNE 30, 2000

AMENDMENT NO. 3

This Amendment No. 3 is made and entered into this 30th day of June, 2000, by and between Cherokee County Cogeneration Partners, L.P. ("Cherokee") and Duke Power ("Duke"), a division of Duke Energy Corporation, to amend the Purchased Power Agreement dated August 26, 1994 between Cherokee and Duke Power Company, as amended by Amendment No. 1 dated November 1994 and Amendment No. 2 dated January 16, 1996 ("Agreement"). The Agreement remains in force and effect and without change except for the following modifications, which shall be incorporated into the Agreement as of the Effective Date:

- Recitals p. 1. Delete the first "WHEREAS" recital in its entirety and substitute the following:
- "WHEREAS, Cherokee has constructed and owns, operates and maintains a natural-gas-fueled combined-cycle electric cogeneration facility on a site located at or near Gaffney, South Carolina (the "Gaffney Cogeneration Facility" or "Facility") which is a qualified facility ("QF") as determined by the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA").
- Article 1.1 Amendment No. 2, p. 1. Delete Article 1.1 in its entirety and substitute the following:
- "(a) Beginning on the Effective Date, Cherokee shall sell and deliver to Duke during all On-Peak Hours all of the capacity and energy generated by the Facility during such hour, consistent with the provisions of Article 12.2, and Duke shall purchase, receive, use and pay for the same, subject to the limitations set forth below and the other conditions contained in this Agreement:

"(1) Cherokee is not required to deliver energy to Duke in excess of 95,000 kilowatt-hours per On-Peak Hour during the months of October through March ("Winter Season").

"(2) Cherokee is not required to deliver energy to Duke in excess of 89,000 kilowatt-hours per On-Peak Hour during the months of April through September ("Summer Season").

"(3) Any energy generated in excess of 95,000 kilowatt-hours in any On-Peak Hour during the Winter Season and 89,000 kilowatt-hours in any On-Peak Hour during the Summer Season may be delivered and sold to Duke subject to the provisions of Article 4.5, or may be sold by Cherokee to parties other than Duke subject to the requirements of Article 1.11, provided that in no event shall Cherokee deliver to Duke, nor shall Duke be required to purchase and pay for, more than 102,000 kilowatt-hours in any On-Peak Hour.

"(4) Duke shall pay for capacity in accordance with the provisions of Article 4 of this Agreement, and Cherokee's performance in providing capacity under this Agreement shall be governed by Article 5 of this Agreement.

"(b) Beginning on the Effective Date, Cherokee may deliver and sell to Duke, and Duke shall purchase, receive, use and pay for when delivered by Cherokee, up to 75,000 kilowatt-hours of energy during any Off-Peak Hour. In addition, Cherokee shall deliver and sell to Duke, and Duke shall purchase, receive, use and pay for the amount of energy requested by Duke pursuant to the procedures set forth in Articles 12.7(c)-(f), up to 75,000 kilowatt-hours of energy during any Off-Peak Hour if requested by Duke. In no event shall Duke be required to purchase in excess of 75,000 kilowatt-hours in any Off-Peak Hour."

Article 1.5 p. 2. Delete this Article in its entirety.

Article 1.6(a) p. 3. Delete the last sentence (in bold type) and substitute the following:
"On the 100 kilovolt side of Cherokee's generator step-up transformers."

Article 1.6(c) p. 3. Delete Article 1.6(c) in its entirety.

Article 1.11 Amendment No. 2, p. 2. Delete Article 1.11 in its entirety and substitute the following:

"Nothing in this Agreement shall prohibit Cherokee from selling electric power to any third party, provided that any such sale to third parties shall be subject to the following restrictions and limitations: (a) during any On-Peak Hour in which such a third-party sale is made during the Winter Season, Cherokee shall deliver to Duke 95,000 kilowatt-hours during that hour; (b) during any On-Peak Hour in which such a third-party sale is made during the Summer Season, Cherokee shall deliver to Duke 89,000 kilowatt-hours during that hour; and (c) during any Off-Peak Hour Cherokee shall comply with any directive from Duke, issued pursuant to the procedures of Articles 12.7(c) and (d), that Cherokee deliver to Duke that portion of the first 75,000 kilowatt-hours of output from the Facility requested by Duke, irrespective of such third-party sale."

Article 2.1

p. 4. Delete Article 2.1 in its entirety and substitute the following:

"Except as otherwise provided herein, Duke's obligations under this Agreement are contingent upon Cherokee (a) obtaining and maintaining approvals for the Facility to operate from all regulatory bodies as required by law, including a certificate of environmental compatibility and public convenience and necessity from the Commission ("Certificate"); and (b) maintaining compliance during the term of the PPA with the criteria for a PURPA qualifying facility (a "QF") under 18 C.F.R. §§ 292.205 and 292.206, any successor regulations and any applicable FERC decisions. Notwithstanding anything to the contrary in this Agreement or any other agreement between the Parties, Cherokee has no obligation to own, construct or maintain any particular equipment, structure, facility, contract or arrangement in order to satisfy the criteria for QF status. Cherokee shall, at its option, utilize one or more of the procedures set forth in 18 C.F.R. § 292.207 or any successor regulations for certification of its QF status, including all notice and service requirements contained therein. If Duke, upon receipt of a notice by Cherokee of self-certification or recertification pursuant to 18 C.F.R. § 292.207(a), reasonably believes that Cherokee might have changed the ownership, operation, or efficiency of the Facility in such a way that it no longer meets the criteria for QF status, it may request that the Operating Committee provided for in Article 12.8 be convened to discuss the issues raised by Duke. If the Operating Committee is unable to resolve those issues informally within ten (10) days, Duke may direct Cherokee in writing to apply to the FERC for certification pursuant to 18 C.F.R. § 292.207(b)."

Article 4.1

p. 8. Delete the last sentence of Article 4.1 and substitute the following:

"The rates set forth in Appendix A are based upon Duke's projections of

its avoided capacity and energy costs, as approved in the then-most recent (as of the date of execution of this Agreement) regulatory proceedings at which Duke's avoided cost rates for purchases from QFs were determined (North Carolina Utilities Commission Docket No. E-100, Sub 66), which projections utilized the methodology then-currently approved by the South Carolina Public Service Commission for determination of avoided costs (Order No. 89-59, Docket No. 80-251-E)."

Article 4.5

p. 8. Delete Article 4.5 in its entirety and substitute the following:

"(a) For the purposes of determining the amounts to be paid to Cherokee by Duke for energy delivered under this Agreement, the appropriate Energy Credit Rates as set forth in Appendix A shall be applied to all of the energy in kilowatt-hours delivered to Duke during the On-Peak Hours and Off-Peak Hours of each month, subject to the following limitations:

"(1) the maximum amount of energy to which the Agreement's On-Peak Energy Credit Rates shall apply during the Winter Season is 95,000 kilowatts times the number of On-Peak Hours during the Winter Season;

"(2) the maximum amount of energy to which the Agreement's On-Peak Energy Credit Rates shall apply during the Summer Season is 89,000 kilowatts times the number of On-Peak Hours during the Summer Season; and

"(3) the maximum amount of energy in any Off-Peak Hour to which the Agreement's Off-Peak Energy Credit Rates shall apply is 75,000 kilowatt-hours.

"(b) For purposes of determining the amounts to be paid to Cherokee by Duke for capacity delivered under this Agreement, the appropriate Capacity Credit Rates set forth in Appendix A will be applied only to the energy in kilowatt-hours delivered to Duke during the On-Peak Hours of each month up to a maximum of one-hundred ten percent (110%) of the Capacity Commitment applicable to that month times the number of On-Peak Hours in the month.

"(c) If Cherokee delivers to Duke more than 95,000 kilowatt-hours in any On-Peak Hour during the Winter Season or more than 89,000 kilowatt-hours in any On-Peak Hour during the Summer Season, Duke shall initially pay for the energy in excess of such amounts ("Excess

Energy”) at Duke’s Hourly Incremental Cost. For purposes of this Article, “Hourly Incremental Cost” means Duke Power’s incremental energy cost to serve its native load obligations in the hour in which the Excess Energy delivery occurred. Within 45 days following the last month of each Winter and Summer Season, Duke shall submit to Cherokee a statement showing Cherokee’s Excess Energy Volumes Subject to Repricing (“VSR”) and the associated True-Up Payment for the applicable season. The True-Up Payment due to Cherokee shall be transmitted to Cherokee simultaneously with the submittal of said statement. The True-Up Payment shall be calculated as follows:

$$\text{TRP} = \text{VSR} \times (\text{CECR} - \text{AHIC})$$

Where:

TRP = True-Up Payment

VSR means the difference between (1) the lesser of the Seasonal Cap and the total number of kilowatt-hours of energy delivered by Cherokee to Duke during On-Peak Hours of that Winter or Summer Season and (2) the number of kilowatt-hours of energy for which Duke initially paid the On-Peak Energy Credit price specified in Appendix A (as opposed to the Hourly Incremental Cost) during On-Peak Hours of that Winter or Summer Season;

Seasonal Cap means, for the Winter Season, 95,000 kilowatts times the number of On-Peak Hours in such season and, for the Summer Season, 89,000 kilowatts times the number of On-Peak-Hours in such season;

CECR (Contract Energy Credit Rate) means the On-Peak Energy Credit prices provided for in Appendix A for the applicable months of the Winter or Summer Season; provided that, for each Winter Season, the Contract Energy Credit Rate shall be calculated by taking the arithmetic sum of the On-Peak Energy Credit Rate as set forth in Appendix A applicable to October through December of that Winter Season plus the On-Peak Energy Credit Rate as set forth in Appendix A applicable to January through March of that Winter Season and dividing said sum by two; and

AHIC (Average Hourly Incremental Cost) means the sum of the dollar amounts initially paid by Duke for Excess Energy during each of the months of the Winter or Summer Season divided by the total kilowatt-hours of Excess Energy during that Winter or Summer Season.

Notwithstanding the foregoing, however, in no event shall Duke be required to pay any amount for any energy delivered to it during any On-Peak Hour in excess of 102,000 kilowatt-hours and for any energy delivered to it during any Off-Peak Hour in excess of 75,000 kilowatt-hours."

Article 4.7

p. 9. Add the following to Article 4.7:

"Notwithstanding anything to the contrary in this Article 4.7, the Parties expressly agree that if, at any time during the remaining term of this Agreement, Duke fails to obtain or is denied authority from the Commission, or any other regulatory body which now has or in the future may have jurisdiction over Duke's rates and charges, to recover from its customers (i) all or any portion of the amounts Duke is required to pay under Amendment No. 3 for volumes of energy and capacity in excess of those Duke was required to purchase pursuant to the version of Article 1.1 of this Agreement that was in effect prior to its amendment by Amendment No. 3, or (ii) any additional amounts that Duke is required to pay as a result of rate changes set forth in Amendment No. 3 for the volumes of capacity and energy Duke was obligated to purchase under Article 1.1 of this Agreement prior to its amendment by Amendment No. 3, Duke nevertheless shall remain liable to Cherokee for the full payment of all said amounts."

Article 5.1

p.9. Delete "as designated in Article 1.5 (b)" from the opening clause of Article 5.1.

Article 5.1(a)

p. 9. Delete Article 5.1(a) in its entirety and substitute the following:

"(a) Cherokee's performance in providing capacity under this Agreement shall be based on its ability to meet its Capacity Commitment, as measured by this Article 5; provided, however, that this Article 5.1 (a) shall not be construed as requiring Cherokee to deliver the Capacity Commitment in any particular hour. The Capacity Commitment shall be 86,400 kilowatts during the Winter Season and 83,700 kilowatts during the Summer Season, unless modified pursuant to Article 5.2. Cherokee's obligation to provide energy in any particular On-Peak Hour or Off-Peak Hour is set forth in Article 1.1, Article 1.11 and Articles 12.7(b), (c), and (d) and nothing in this Article 5 shall be construed as imposing any different obligation."

- Article 5.2(a) p. 10. Delete the second sentence of Article 5.2(a) and substitute the following:
- "The revised Capacity Commitment for the Winter Season and the Summer Season will be determined by multiplying the applicable seasonal Capacity Commitment in effect for each season prior to said two (2) month period by the Annual Capacity Ratio in effect at the end of said two (2) month period."
- Article 5.5 p.11. Delete the phrase "Article 1.5 (b)" and substitute "Article 5.1 (a)".
- Article 6.2(a) p.12. Delete the first sentence of Article 6.2(a) and substitute the following:
- "Prior to installation of the Interconnection Facilities, Cherokee made an up-front cash payment to Duke in the amount of \$1,187,475.00, receipt of which Duke hereby acknowledges, as reimbursement for the estimated installed capital cost of the Interconnection Facilities, including appropriate amounts for income and sales taxes, if applicable. Upon completion of the installation of the Interconnection Facilities, Duke paid Cherokee a refund of \$21,318.63 for the difference between the up-front payment for the estimated installed cost of the Interconnection Facilities and the actual costs incurred by Duke for the installation of the Interconnection Facilities, receipt of which Cherokee hereby acknowledges."
- Article 6.2(b) pp. 12-13. Amend Article 6.2(b) to: (i) delete the blank in the first paragraph thereof and substitute the figure "\$7,247.38"; (ii) delete Article 6.2(b)(1) and substitute the following: "\$6,592.38, for operation and maintenance of the Interconnection Facilities, which is 0.5% of the estimated installed cost of the Interconnection Facilities, which estimated installed cost is \$1,187,475.00, and" (iii) delete the blank in Article 6.2(b)(2) and substitute the figure "\$655.00"; (iv) delete ", and" in Article 6.2(b)(2) and substitute a period; and (v) delete all of Article 6.2(b)(3).
- Article 7.1 p. 14. Delete Article 7.1 and substitute the following:
- "Duke shall submit to Cherokee as promptly as possible, but within thirty (30) days following each regularly scheduled monthly meter reading, a statement showing Cherokee's On-Peak and Off-Peak energy deliveries, On-Peak and Off-Peak Excess Energy deliveries, the associated capacity credits and energy credits, and the Interconnection Facilities Charge. The

Operating Committee shall agree as to what additional information Cherokee reasonably needs to confirm Duke's statement. Actual payment to Cherokee, net of the Interconnection Facilities Charge, shall be transmitted to Cherokee simultaneously with the submittal of said statements."

Article 10.3(f) p. 21. Delete 10.3(f) and substitute the following: "repeated and material failures to comply with the provisions of Article 12.7 (d); or"

Article 12.2 p. 23. Delete Article-12.2 and substitute the following:

"Cherokee, including its contractors or agents, shall operate and maintain the Facility in a prudent manner in accordance with applicable electric utility industry standards, good engineering practices, and its obligation to maintain its QF status, so as to produce the maximum electric energy output (up to the limits set forth in Article 1.1) during On-Peak Hours of the On-Peak Months, unless the generating unit incurs a forced outage or Cherokee properly schedules a maintenance outage for the Facility."

Article 12.5 pp. 23-24. Delete all of Article 12.5.

Article 12.7 p. 24. Add the following as a new Article 12.7:

"12.7 Cherokee and Duke shall comply with the following scheduling and recall procedures:

"(a) Cherokee shall provide Duke with schedules of expected deliveries of energy under this Agreement. The amounts scheduled by Cherokee to Duke must be consistent with Cherokee's delivery obligations set forth in this Agreement. These schedules may be provided by Cherokee up to a week in advance of actual deliveries. The Parties recognize that Cherokee is not guaranteeing delivery of the amounts set forth in its schedules of expected deliveries and that actual deliveries may vary from the scheduled amounts.

"(b) At any time that Cherokee makes third-party sales, Cherokee shall provide Duke with a schedule showing the amount of energy that will be delivered to Duke and the amount of energy that will be delivered to the third party. Such schedule, and any revisions thereto, shall be submitted by Cherokee to Duke at the same time Cherokee notifies its transmission provider of the intended delivery, or change in delivery, to third parties.

"(c) If Cherokee intends to make a third-party sale in any Off-Peak Hour of all or any portion of the first 75,000 kilowatt-hours of output from the Facility, the following procedures shall apply:

"(1) If Cherokee notifies Duke no later than 8:30 a.m. of the preceding day that it intends to make such a sale, (which notice shall include the amounts, if any, Cherokee intends to deliver to Duke and to third parties during each hour of such sale) then Duke shall have until 9:15 a.m. of such preceding day to notify Cherokee of any decision by it to exercise its right of first refusal pursuant to Article 1.11 with respect to all or any portion of the first 75,000 kilowatt-hours of the Facility's output that Cherokee intends to deliver to a third party, in which case Cherokee shall schedule deliveries in accordance with Duke's notification and Article 12.7(b) hereof. If Duke does not notify Cherokee by such 9:15 a.m. deadline of an election to exercise its right of first refusal pursuant to Article 1.11, Duke's right to recall shall thereafter be limited to that specified in Article 12.7(d) hereof. A notice provided by Cherokee to Duke pursuant to this Article 12.7(c)(1) shall not be provided more than two days prior to the date the proposed sale is intended to occur unless the Parties otherwise agree.

"(2) If, at any time after 8:30 a.m. of the day preceding the date of delivery, Cherokee intends to make a third-party sale for more than one Off-Peak Hour, Cherokee shall notify Duke no later than ninety (90) minutes before the proposed sale is intended to commence of the quantities, if any, it intends to deliver to Duke and to third parties in such hours. If Duke decides to exercise its right of first refusal pursuant to Article 1.11 with respect to all or any portion of the first 75,000 kilowatt-hours of the Facility's output that Cherokee intends to deliver to the third party, Duke shall so notify Cherokee by no later than forty-five (45) minutes before the proposed sale is intended to commence, in which case Cherokee shall schedule deliveries in accordance with Duke's notification and Article 12.7(b) hereof. If Duke does not notify Cherokee by such forty-five (45) minute deadline of an election to exercise its right of first refusal pursuant to Article 1.11, Duke's right to recall shall thereafter be limited to that specified in Article 12.7(d) hereof.

"(3) If, at any time after 8:30 a.m. of the day preceding the date of delivery, Cherokee intends to make a third-party sale limited to one Off-Peak Hour, Cherokee shall notify Duke no later than sixty (60) minutes before the proposed sale is intended to commence of the quantities, if any, it intends to deliver to Duke and to third parties in such hour. If Duke decides to exercise its right of first refusal pursuant to

Article 1.11 with respect to all or any portion of the first 75,000 kilowatt-hours of the Facility's output that Cherokee intends to deliver to the third party, Duke shall so notify Cherokee by no later than forty-five (45) minutes before the proposed sale is intended to commence, in which case Cherokee shall schedule deliveries in accordance with Duke's notification and Article 12.7(b) hereof. If Duke does not notify Cherokee by such forty-five (45) minute deadline of an election to exercise its right of first refusal pursuant to Article 1.11, Duke's right to recall shall thereafter be limited to that specified in Article 12.7(d) hereof.

"(d) If, for any Off-Peak Hour in which (i) Duke did not exercise its right of first refusal pursuant to Article 12.7(c), or (ii) Cherokee has notified Duke that it does not intend to deliver 75,000 kilowatt-hours to Duke for any other reason, Duke may thereafter direct that Cherokee nevertheless deliver to it up to 75,000 kilowatt-hours in such hour only if one or more of Duke's generating units incurs a forced outage and cannot reasonably be placed back on line by the commencement of such hour, provided that Cherokee is able to produce such additional energy consistent with its obligation to maintain its QF status; provided, however, that Cherokee is not required to comply with Duke's directive in the event that Cherokee experiences a forced outage or properly-scheduled maintenance outage. (In the event of such a forced outage of the Facility, Cherokee shall provide Duke with reasonable proof of the occurrence of such a forced outage within twenty-four hours of receiving a request for such proof from Duke). Duke shall provide Cherokee with such direction no later than thirty (30) minutes before the energy deliveries are intended to commence. (In the event of Duke exercising its rights under this Article 12.7 (d), Duke shall provide Cherokee with reasonable proof of the occurrence of a forced outage of one or more of Duke's generating units within twenty-four hours of receiving a request for such proof from Cherokee).

"(e) Duke may, but in no event shall be obligated to, provide to Cherokee notice at any time of its intention not to exercise all or any portion of its recall rights under Articles 1.11 and 12.7(c) and (d) for any Off-Peak Hour, in which case Cherokee shall, upon receipt of such notice, be free to sell and deliver to third parties the energy Duke has chosen not to recall in such hour, without further regard to the requirements of Articles 12.7(c) and (d).

"(f) Subject to the limits on Duke's purchase obligations set forth in Article 1.1, payments by Duke to Cherokee shall be based on actual metered amounts during hours in which no third-party sales are scheduled

by Cherokee, and on the lesser of actual metered amounts and the amount of energy Cherokee has scheduled for delivery to Duke during hours in which Cherokee has scheduled third-party sales."

Article 12.8

p. 24. Add the following as a new Article 12.8:

"(a) Each Party shall appoint one representative and one alternate representative to form an Operating Committee to act in matters relating to this Agreement. The Parties shall notify each other in writing of such appointments and any changes thereto.

"(b) Any dispute between the Parties involving this Agreement shall be referred to the Operating Committee for resolution on an informal basis as promptly as practicable. If the Operating Committee is unable to resolve the issue informally within ten (10) days, either Party may elect to terminate consideration of the issue through the Operating Committee.

"(c) The Operating Committee shall reach its decision by agreement of both representatives; provided, however that the Operating Committee shall have no power to alter or amend this Agreement. All decisions by the Operating Committee shall comport with the provisions of this Agreement including, but not limited to, provisions allocating the cost responsibility of each of the Parties."

Article 14.2 (a)

p.26. Delete "set forth in Article 1.5 (b)" from the end of Article 14.2 (a).

Article 14.2 (b)

p. 26. Add the following to the end of the definition of "Capacity Commitment":

"; provided, however, that for purposes of this Article 14 only, the Capacity Commitment shall not exceed 72,700 kilowatts."

Article 17.1

p. 29. Delete Article 17.1 in its entirety and substitute the following:

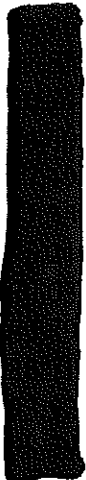
"To the extent that Cherokee provides electricity or heat to its thermal host, Cherokee will provide such electricity and heat only to the extent permitted under applicable state law, provided, however, that Duke's remedy for any breach by Cherokee of this Article 17.1 shall be limited to recovery of damages incurred by Duke and shall not include a right by Duke to suspend or terminate its performance under this Agreement, and provided further that nothing herein undermines Duke's rights and limitations on its obligations under Article 2.1 of this Agreement.

Effective Date: The Effective Date of this Amendment No. 3 shall be July 1, 2000.

APPENDIX A Delete the existing Appendix A and substitute the attached Revised Appendix A.





APPENDIX B Delete Table B-1 and substitute the following:

"Table B-1
LIQUIDATED DAMAGES RATE

Year	LDR _(n) (\$/KW)
2000*	
2001	
2002	
2003	
2004	
2005	
2006	
2007	
2008	
2009	
2010	
2011	

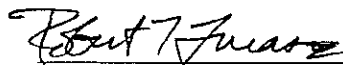
*The Liquidated Damages Rate for 2000 shall apply as of the Effective Date of Amendment No. 3."

Delete the paragraph immediately following Table B-1 and substitute the following:

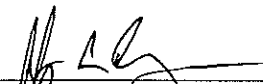
"If Cherokee notifies Duke, pursuant to Article 3.5, that it does not wish to continue to generate electricity at the Facility following the expiration of the term of this Agreement, or if Cherokee notifies Duke that it does wish to continue to generate electricity at the Facility following expiration of this Agreement, and Duke responds that it does not intend to purchase said electricity, then the Liquidated Damage Rate (LDR_(n)) set forth in Appendix B shall be reduced to  in 2008, to  in 2009, to  in 2010, and to  in 2011."

Except as expressly modified herein, this Agreement shall remain in full force and effect and is hereby ratified and affirmed.

ATTEST:


Name: Robert T. Lucas III

DUKE POWER, A DIVISION OF
DUKE ENERGY CORPORATION

By: 
Name: Jeffrey L. Boyer,
Title: Vice President, Planning and Finance

CAITHNESS CHEROKEE GP, LLC
a Delaware limited liability company,
as a General Partner to
Cherokee County Cogeneration Partners,
L.P.

ATTEST:

Name: _____

By: _____
Name: Kenneth P. Hoffman
Title: Senior Vice President

ESI CHEROKEE MGP, INC.
a Florida Corporation,
as a General Partner to
Cherokee County Cogeneration Partners,
L.P.

ATTEST:

Name: _____

By: _____
Name: Michael L. Leighton
Title: Vice President

Duke Power

REVISED APPENDIX A

Amendment No. 3

Page 1 of 1

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.
"Gaffney Cogeneration Facility"

CHEROKEE SCHEDULE 1

AVAILABILITY

Available only to Cherokee for the "Gaffney Cogeneration Facility" which is a generating facility which is interconnected with Duke's system and which is a qualified facility as determined by the Federal Energy Regulatory Commission pursuant to Section 210 of the Public Utilities Regulatory Policies Act of 1978.

The Rate, as shown below, expires on the fifteenth (15th) anniversary of the Commercial Operations Date. The rates set forth herein are based upon Duke's projections of its avoided capacity and energy costs, as approved in the then-most recent (as of the date of execution of this Agreement) regulatory proceedings at which Duke's avoided cost rates for purchases from QFs are determined (North Carolina Utilities Commission Docket No. E-100, Sub 66), which projections utilized the methodology then-currently approved by the Commission for the determination of avoided costs (Order No. 89-59, Docket No. 80-251-E).

RATE:

YEAR	Energy Credit Rate (¢/kWh)		YEAR	Capacity Credit Rate (¢/kWh)	
	On-Peak Hours	Off-Peak Hours		On-Peak Month	Off-Peak Month
1996			1996		
1997			1997		
1998			1998		
1999			1999		
2000 ⁽¹⁾			2000		
2000 ⁽²⁾			2000		
2001			2001		
2002			2002		
2003			2003		
2004			2004		
2005			2005		
2006			2006		
2007			2007		
2008			2008		
2009			2009		
2010			2009		
2011			2009		
2012			2009		
2013 ⁽³⁾			2009		

⁽¹⁾ Applies to January through June 2000 only.

⁽²⁾ Applies to July through December 2000 only.

⁽³⁾ Applies to January through June 2013 only.

- All rates stated on a cents/kWh basis.
- Capacity rates applicable during On-Peak Hours only.
- On-Peak Hours: 7AM - 11PM, Mon-Fri.
- Off-Peak Hours: All other weekday hours and all weekend hours.
- On-Peak Months: June - September and December - March.
- Off-Peak Months: April, May, October and November.
- No capacity credits will be applied to power delivered to Duke prior to the Commercial Operations Date.
-